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COMMISSION ON HUMAN RIGHTS

Forty-seventh session

SUMMARY RECORD OF THE 32nd MEETING
(FIRST PART*)

Held at the Palais des Nations, Geneva,
on Tuesday, 19 February 1991, at 3 p.m.

Chairman: Mr. AMOO-GOTTFRIED (Ghana)
later: Mr. BERNALES BALLESTEROS (Peru)

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* The summary record of the second part of the meeting appears as document E/CN.4/1991/SR.32/Add.1.

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The meeting was called to order at 3.20 p.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(agenda item 10) (continued) (E/CN.4/1991/15-17, 19, 20 and Add.1, 49 and 66; E/CN.4/1991/NGO/4, 17, 19-22, 24 and 33; A/45/590 and 633; A/RES/45/142 and 143; E/CN.4/Sub.2/1990/11, 27, 29 and Add.1, 32, 33 and Add.1 and Add.2 and 34; E/CN.4/Sub.2/1989/30/Rev.2)

1. Mr. ALIM (Observer for the Sudan) said that his delegation wished to thank the Special Rapporteur on torture for the work he had put into the preparation of his report (E/CN.4/1992/17) though it was full of factual errors and highly prejudiced with regard to the human rights situation in the Sudan. Paragraphs 156-169 of the report presented some cases of political detainees and torture which the Special Rapporteur had thought merited sending an urgent appeal to the Government of the Sudan. In response to those allegations, his Government had furnished the Special Rapporteur, on 28 November 1990, with detailed lists indicating the status of all the persons mentioned and also responding to communications from other sources.

2. As the report had been issued on 10 January 1991, the Special Rapporteur should have had ample time to compare the names mentioned in his report with those in the lists brought to his attention by the Government. Unfortunately, the Special Rapporteur had simply mentioned the fact of receiving those lists, without making any comments on their relevance to the allegations.

3. His delegation therefore felt obliged to make some comments on the paragraphs relating to the situation in the Sudan. Paragraphs 156, 159 and 160 referred to Mr. Abderrahman Farah, Mr. Alfred Taban and Dr. Mamoun Mohammed Hussein who, it was alleged, had been arrested and tortured. None of those persons was currently detained, as mentioned in the lists brought to the attention of the Special Rapporteur, Dr. Mamoun having been pardoned and released in April 1990.

4. Nevertheless, allegations had continued to be made to the contrary. A mission from the ACP/EEC Assembly, led by the co-President of that body and former Prime Minister of Belgium, had accepted an invitation from his Government and visited the Sudan. The mission had had an opportunity to meet Dr. Mamoun in his clinic, where he had resumed his work in full liberty, and had confirmed that he had not been subjected to ill-treatment or torture.

5. His Government reiterated its commitment to the standards of human rights and rejected all false allegations claiming that the practice of torture existed in the country. The draft report of the ACP/EEC mission, which indicated that the political detainees it had met in prisons in Sudan had testified that they had not been subjected to any torture or inhuman treatment, was proof of his Government's commitment to human rights.

6. During the forty-sixth session of the Commission, the Special Rapporteur had informed members that he had sent an appeal to the Government of the Sudan concerning some detainees and that he had received no reply, without indicating the date on which he had sent the appeal. The date in question was 31 January 1990 and his presentation had been made on 14 February 1990, i.e. only two weeks later, a period which was definitely not adequate to enable the Government to reply.

7. His delegation cautioned against the attitude shown by the Special Rapporteur in dealing with the information made available to him by the Sudanese Government, since such an attitude might discourage countries from co-operating. Furthermore, his Government reserved the right to request the Commission to rectify those mistakes and to include in the report of the Special Rapporteur the information it had provided. It categorically denied any consistent pattern of violations of human rights in the Sudan. His delegation requested that its reply be issued as an official document of the Commission.

8. In conclusion, he noted with appreciation the positive reference made to his country by the representative of the Netherlands, and assured that representative of his delegation's continued co-operation with all bodies concerned with human rights.

9. Ms. BRIDEL (International Association of Democratic Lawyers) said, with regard to the situation in Morocco, that during the general strike on 14 December 1990, called by the General Union of Moroccan Workers and the Democratic Confederation of Labour as a result of the social discontent caused by a budgetary austerity policy and the high unemployment level among young people, several dozen demonstrators had been killed by the security forces. It was difficult to determine the exact numbers, since their families had preferred to bury them in secrecy. The same was true with regard to the number of injured persons, who had avoided making themselves known for fear of reprisals.

10. Many young persons had been arrested both during and following the demonstrations. Collective trials were being held in various cities of the country, particularly at Fez and Tangiers, in which lawyers had denounced serious procedural irregularities. The lawyers had withdrawn from some trials, considering that the exercise of the right to defence had become impossible, and the judges had handed down sentences in their absence.

11. The demonstrators who had been arrested had definitely not been given a fair trial and had received harsh sentences. By way of example, for having exercised their right to freedom of expression and their right to strike, 12 persons had been sentenced on 25 December 1990 at Fez to seven years' imprisonment and 28 others to terms ranging from one to five years.

12. Her organization stressed that respect for the right to defence was both a fundamental principle and an essential mechanism of the machinery for the protection of individual and collective civil, political, economic and social rights and that it was therefore part of the rules of international public order enbodied in the Charter of the United Nations and the International Covenants on Human Rights.

13. Consequently, her organization called for the release of all persons arrested following the strike; supported the request for the establishment of an honest and independent commission of inquiry to investigate the tragic events that had occurred in Fez and other cities; requested that the full list of victims of the repression should be made public; called for those responsible for the murder of demonstrators and the ill-treatment inflicted on detainees to be identified and tried according to the law and for the physical integrity of the detainees to be respected; and urged Morocco to respect human rights, in particular the right to a defence and trade union rights.

14. Since 1976, some 800 Saharans had been arrested by the Moroccan authorities. Their families and relatives had had no news of them since then and the representations made by humanitarian and human rights organizations to the Moroccan authorities in that regard had proved fruitless. The attitude of the Moroccan authorities made the organizations concerned fear for the fate of those missing persons.

15. Her organization was bringing the matter to the attention of the Commission in order to oblige the Moroccan Government to break its silence and to state what had happened to those persons. It was making that appeal so that the Saharans who had disappeared could be brought before a court, given a fair trial and be able to receive visits from their relatives and from all humanitarian and human rights organizations that wished to do so.

16. With regard to the situation in South Korean prisons, in particular those at Mokpo and Seoul, he said that there were many political prisoners serving more or less lengthy prison terms. They were systematically subjected to violent and arbitrary treatment by the South Korean penitentiary staff. Evidence given by recently released students indicated that the prisoners were regularly punched and kicked, tied with ropes, deprived of food and drink, and kept in special cells. They were force-fed if they tried to stage a hunger strike. The Minister of Justice had prohibited any visit to political prisoners by "politically committed" friends.

17. At the time of their arrests, a number of workers and students had been violently beaten on all parts of their bodies and had been prevented from sleeping for two to three days so that they would agree to sign confessions.

18. Mr. TEITELBAUM (American Association of Jurists) said that the draft declaration on enforced on involuntary disappearances was an essential first step to ensure that such disappearances would be treated as an extremely serious crime under international and national positive law. It was a very serious crime both because of its particularly hateful characteritics and because it was committed with the direct or indirect participation of the State or its agents.

19. The draft declaration submitted to the Commission was the culmination of more than 10 years' work during which numerous international meetings had been held. The General Assembly of the Organization of American States had declared, in November 1983, that the enforced disappearance of persons was a crime against humanity and, in 1988-1989 the Inter-American Commission on Human Rights had prepared a draft convention on the subject. In addition to numerous non-governmental and intergovernmental organizations, experts from all continents made their views known either in person or in writing.

20. It could be said, therefore, that all States had had sufficient time in which to make known their views and their observations. It was most surprising, therefore that some delegations were asserting that the draft declaration could not be adopted during the current year since it required further study.

21. While the draft was not perfect, it was a declaration and therefore a first step in the elaboration of international standards in the matter. His organization which supported the idea of approving the declaration at the current session, but maintained its comment regarding the fact that the draft did not expressly exclude military courts from trying persons charged with having been responsible for enforced disappearances.

22. Everyone was aware of the destructive role with regard to democratic institutions played by the armed forces in the great majority of Latin American countries. Military coups d'état took place one after another in Latin America and constant pressure was exerted on the civilian power to obtain pardons or amnesties not only with regard to the most serious violations of human rights but also large-scale economic crimes that left the majority of the population impoverished.

23. The peoples and civilian Governments of Latin America and the Caribbean had the right to hope that the international community would help them thwart the advances of the military power. Postponing approval of the draft declaration would undoubtedly encourage the enemies of democracy and of human rights to commit further violations. His delegation therefore called on the Commission to adopt the draft declaration at its current session, with the addition of the proposal to exclude expressly military courts from trying the crime of enforced disappearances.

24. His delegation thought it important to bear in mind the fact that restrictions on the right to freedom of opinion and expression and the flouting of the independence and impartiality of the judiciary were universal phenomena found not only in the less developed but also in the most developed countries. For example, with regard to freedom of opinion, the Constitution of Federal Republic of Germany guaranteed a series of fundamental rights, including that of opinion, but another article of the same Constitution said that anyone who abused the freedom of opinion in order to undermine the fundamental free and democractic order should lose that fundamental right.

25. That imprecise concept of the abuse of the right of the freedom of opinion had made it possible to restrict that right in a manner contrary to international standards. In fact, the act on federal officials and employees and the basic act on public officials and employees of the Länder which established the duty of loyalty to the fundamental, free and democratic order had given rise over the years to numerous dismissals of public officials and employees and to discrimination in access to public service for reasons related to political opinions and activities, whether real or presumed, linked primarily with the German Communist Party.

26. For example, all the scientific staff and some of the technical staff of the History Museum of East Berlin had been dismissed, apparently because of its merger with the History Museum of West Berlin. In October 1990, the Academy of Sciences of the former German Democratic Republic had been dissolved and the fate of its 24,000 officials and employees was unknown.

27. Situations of that type should also form the subject of consideration in the Commission and the Sub-Commission, although they took place in a developed country. The attention given by the various United Nations bodies to that particular case might help ensure that the new Constitution of Germany would provide better guarantees for the right to freedom of opinion and expression and do away with discriminatory legislation.

28. Mr. LITTMAN (World Union for Progressive Judaism) said that he wished to introduce Father Marcel Dubois, the Superior of St. Isaiah House, Director of the Ratisbonne Catholic Institute for Jewish Studies in Jerusalem and Consultant of the Pontifical Commission for Religious Relations with Judaism. He was also a citizen of Israel and in November 1989 had been made an honorary freeman of the city of Jerusalem.

29. Father DUBOIS (World Union for Progressive Judaism said that he was a Catholic priest and friar and an Israeli citizen who had lived in Jerusalem for nearly 30 years. Jerusalem was a city with two peoples and three religions. It could be a laboratory and a proof that believers could live together in peaceful coexistence.

30. He recalled that, when addressing the Commission on 20 February 1988, Cardinal Casaroli had stressed that human rights originated from the dignity of the human being. The elaboration of the rights protecting the freedom of the individual should not consist solely of the elimination of all manifestations of intolerance with respect to religion or belief but primarily of insisting upon the recognition of and respect for freedom of religion and its specific requirements.

31. It was necessary, therefore, to insist upon the duties underlying the rights which the Commission was seeking to define. He emphasized, first of all, the fact that the right to tolerance implied on the part of the State, the community and other persons, the duty to respect the freedoms as defined. That was the foundation of coexistence between different religious communities in the loyalty of each to its own identity. However, it was not a question of passive tolerance but of a respectful and active attitude, capable of considering in its positive value the loyalty of the other to his own belief. That meant, in fact, that the right to religious freedom was ultimately based on the duty of every person to seek the truth and to be consistent with the truth he had discovered.

32. Freedom of conscience was the source of religious freedom. As was well known, that question had occupied Pope John Paul II for several years and he had dealt with it in several important documents and messages to the Church and to the world. Freedom of conscience was, for the Pope, the condition for peace, but also the foundation of all other freedoms. Religious freedom therefore could not be authentic without the freedom of conscience of every believer.

33. The very structure of the act of a believer implied on his part respect for the faith of others. A healthy and authentic faith was the most reliable guarantee of tolerance. In that regard, it must be noted that people were not sufficiently aware of the fact that their life in all its dimensions required the exercise of that mental attitude which was called faith. Faith was

certainty without evidence, a subjective security which preceded the discovery of the object. There was no human life without faith. What was admirable was that God respected that fundamental structure of the human spirit. The object of religious faith was a revelation initiated by God.

34. If faith was perceived as a gift from God, it excluded on the part of the believer any self-sufficiency or condemnation. Intolerance was a degradation of faith. Religious pluralism was respect for the faith of others. That was the meaning of the meeting, held at Assisi in October 1986, between Pope John Paul II and the most representative authorities of the major religions in the world. He had asked them to come together in order to pray for peace, each according to his own faith and tradition. That action should constitute an example for the work of the Commission.

35. In conclusion, he said that Jerusalem was the centre of memory, of prayer and of hope for millions of believers who belonged to the three great monotheistic religions. He was convinced that Jerusalem could be the shrine of mutual recognition and unity, a permanent and exemplary laboratory of what could be called, contrary to all laws of geometry, the experience of convergent verticality.

36. Mr. VITTORI (Pax Christi International) said that the report submitted by the Human Rights Commission of Peru to the previous session of the Working Group on Enforced or Involuntary Disappearances stated that, in the first 11 months of 1990, 232 persons had been illegally detained or had disappeared. Abductions, which generally occurred at night under the cover of the state of emergency, were a persistent phenomenon in that country, where political violence had caused more than 18,000 deaths since 1980. The situation did not seem to have changed greatly since the arrival in office of President Fujimori; in the first four months of his term, there had been 67 disappearances, and 18 of the victims were known to be dead.

37. Those who had been released had given evidence of the ill-treatment inflicted during their detention. Many of them had been hospitalized as a result of torture.

38. The impunity enjoyed by the military or paramilitary forces responsible for the kidnappings seemed to have become endemic in Peru. Investigations into human rights violations were frequently hampered.

39. The situation in many other countries could be described in equally dramatic terms. Information received from Brazil indicated the growing involvement of the security forces and the military in arbitrary or illegal arrests, torture, threats, enforced disappearances and the physical elimination of street children in some urban districts.

40. In El Salvador, various police and army units continued to carry out arbitrary arrests and torture. In Colombia, in November 1990, soldiers had been airlifted into a region where they had arrested, tortured and murdered peasants. In Guatemala, in December 1990, the army had attacked a village, firing indiscriminately on a peaceful crowd of 3,000 civilians.

41. In East Timor, short-term arbitrary arrests enabled the police to torture young people and then to release them before efforts could be made on their behalf. Alarming information continued to arrive from Sri Lanka where the police and paramilitary units violated the law with impunity.

42. There had been many reports of arbitrary arrests and ill-treatment of prisoners in several countries of Asia - the Philippines, Myanmar, Iraq, Lebanon, and Turkey - and of Africa - Sudan, Morocco, Zaire and Rwanda - and one country in Europe - Romania.

43. With regard to Israel, he wondered whether the prolonged curfew imposed on the inhabitants of the occupied territories could not be seen as tantamount to arbitrary collective detention accompanied by torture.

44. The vast resources which had been mobilized to help a small country recover its independence should, as soon as possible, be redirected towards ensuring respect for human rights and fundamental freedoms everywhere in the world.

45. Mr. PIETTE (International Federation of Newspaper Publishers) said that he was troubled by the approach taken in the preliminary report on the right to freedom of opinion and expression (E/CN.4/Sub.2/1990/11). It seemed that the accent had been placed on setting limits on those freedoms rather than on seeking to expand them.

46. Many countries around the world were currently restricting and abusing journalists and the news media, seeking whatever justification was available for such actions. The Commission should give them no possible ground for support and, since there was a risk that the report could serve just a purpose, it should be set aside.

47. As a leading representative of the press in democratic countries, his organization had noted with surprise the small number of non-governmental organizations in that field which had been consulted. For that reason, it reserved the right to submit in writing at a later date more detailed comments on the preliminary report. His organization had also consulted with several other well-established international free-press associations which shared its misgivings about the report; those organizations also requested an opportunity to submit comments after a careful study.

48. He noted with astonishment that the report did not contain a single reference to article 19 of the Universal Declaration of Human Rights, which was the fundamental legal text in the field in the post-war world. Instead, stress was laid on the later International Covenant on Civil and Political Rights, which had not been ratified by a number of countries, including the United States, owing to its restrictive interpretation of press freedom.

49. While commending the Special Rapporteurs on having dismissed as dangerous possible new restrictions based on concepts such as blasphemy, subversion or disinformation, he felt it was regrettable that the existing international legal texts to which they had chosen to refer had been treated as having equal value. In his view, some of them contained other concepts which were also subject to abuse.

50. Turning to recent violations of freedom of the press, he noted that the Soviet policy of glasnost had helped to bring about freedom and independence for millions of people in Central and Eastern Europe. Regrettably, however, he was once more compelled to examine the degree to which such aspirations were being fulfilled in the Soviet Union itself and, in particular, in the Baltic States.

51. Less than a month previously, on 20 January 1991, three journalists had been shot during the takeover by Soviet troops of the Latvian Interior Ministry at Riga. Earlier that month, special troops had occupied the Riga Press House, seizing both the editorial headquarters and Latvia's largest printing facility, and holding the Press House Director captive in his office for more than 10 hours. The Riga Press House was currently being guarded by armed paratroopers and a contingent of uniformed police. Most of the furniture, filing cabinets and typewriters had been seized as Communist Party property. The independent Latvian press continued to attempt to publish in an improvised way, making use of various book-publishing presses, but chronic shortages of printing ink were seriously hampering newspaper production.

52. The lack of crucial supplies was also affecting newspapers in neighbouring Estonia, where there had been no deliveries of newsprint from the Soviet Union in 1991.

53. In Lithuania, on 11 January 1991, Soviet paratroopers had stormed and occupied the Central Printing House at Vilnius, where nearly 85 per cent of Lithuanian newspapers were printed. All printing facilities had subsequently been declared to be the property of the Communist Party. On 13 January 1991, a pre-dawn attack on the television centre and broadcasting tower at Vilnius had led to 14 deaths and injuries to more than 200 civilians. On 25 January, Soviet paratroopers had seized control of the country's main paper warehouse in the name of retrieving Communist Party property. That seizure had exacerbated the already serious shortages of newsprint and other materials experienced by the independent press.

54. Events in the Baltic States were having a palpable effect on glasnost in the Soviet Union, where there were increasing signs of a hardening of attitudes to press freedom and a reversal of the positive trends of recent years. Recent indications of such trends included the suspension on several occasions by the State television and radio authority of an outspoken current-affairs programme and unsuccessful attempts by the authorities to close down the independent news service Interfax.

55. While direct censorship was no longer a feature of government dealings with the media, strict economic control continued to be imposed by the Communist Party on the independent press in the Soviet Union. The Government retained a monopoly on the sale of newsprint, on printing facilities and on distribution services.

56. Lastly, the implementation of a new law protecting the honour and dignity of the Soviet President indicated the degree to which glasnost might be at peril, not least from one of its principal architects, Mr. Gorbachev. On 20 December 1990, a journalist had been charged under the new law after she had compared Mr. Gorbachev to Hitler, and a new case under the law was currently being heard in the town of Tver, where three young Soviet citizens had been charged.

57. Recent reports from various monitoring organizations had indicated that as many as 43 journalists at work in 19 countries had been killed during 1990 and that 198 journalists remained in prison for their opinions.

58. Mr. SALAZAR (Andean Commission of Jurists), having commended the Working Group on Enforced or Involuntary Disappearances on its efforts to monitor such occurrences worldwide and its important recommendations to the international community, said that, unfortunately, those efforts still appeared to be insufficient.

59. In two countries of the Andean region, Colombia and Peru, enforced disappearances were a frequent occurrence. Both of those countries - which had constitutional Governments - were involved in armed conflicts with subversive and drug-trafficking groups. In that context, elements of the security forces made use of enforced disappearances as part of the State's anti-subversive operations. Far from establishing peace, however, the practice contributed to the overall violence and the general feeling of mistrust between the State and its citizens.

60. It should be stated clearly that the terrorist actions of some armed groups were a major factor in the violence in those countries. Nevertheless, the Governments concerned should not respond with illegal acts such as enforced disappearances. In many cases, the victims were completely innocent. The method was not only illegitimate and immoral, it also helped to erode the State's authority by showing that it did not respect the laws or the basic rights of its citizens.

61. In Colombia, the fact that enforced disappearances continued to occur, despite visits by the Working Group and Special Rapporteur on summary or arbitrary executions and numerous communications from non-governmental organizations, merited special attention. The Working Group had mentioned, in its report on a visit to Colombia in 1989, the severe restrictions placed on the right of habeas corpus in that country, and had recommended that pertinent measures should be adopted to restore it to its proper place (E/CN.4/1989/18/Add.1, paras. 133 and 134). Nevertheless, that and other recommendations made by the Working Group to the Colombian Government had not been taken into consideration.

62. Although it was true that, in a situation of acute internal conflict, it could be difficult for the central authority of a State to control the conduct of all the members of its security forces, that did not exempt a State from its responsibilities. It was particularly unacceptable that citizens should be deprived of such elementary means of protection, as habeas corpus.

63. Another Andean country which had been acutely affected by enforced disappearances for several years was Peru. In that country, the homicidal actions of the armed subversive groups, especially Sendero Luminoso (Shining Path), were well known. However, judging from the majority of the complaints lodged, it was the security forces which practised enforced disappearances in Peru. Even worse than the high number of cases was the problem of impunity, which meant that those responsible were never brought to justice and that investigations were frequently disrupted.

64. In view of the situation in those two countries, it was essential for the international community and the Commission to adopt vigorous and concrete measures. The Commission should request the countries visited by the Working Group to report in detail on their implementation of the Group's recommendations. Special attention must be given to effective means of guaranteeing the right of habeas corpus and ensuring that those accused of responsibility for disappearances were brought to justice.

65. In that connection, he emphasized the importance of the draft declaration on the protection of all persons against enforced or involuntary disappearances and urged its adoption by the Commission. He also suggested that the Commission should consider creating specific machinery for dealing with the human rights situation in Colombia and Peru.

66. Ms. ALEXIU (Latin American Federation of Associations of Relatives of Disappeared Detainees) drew attention to the report of the Working Group (E/CN.4/1991/20), which showed that the problem of enforced disappearances had not been surmounted. While the statistics in the report showed a decrease in disappearances, the Working Group had acknowledged that hundreds of complaints had been deemed inadmissible for technical reasons and that in other cases complaints had not been lodged.

67. Her organization had catalogued more than 100,000 cases of disappearance in Latin America over the past two decades. Complaints had recently been received from other countries and regions; for instance, there were 857 reported cases of disappearance attributed to Moroccan authorities in the Western Sahara, 1,500 in Sri Lanka and 500 in Iran.

68. The report had also referred to responses from Governments and to the resolution of cases. In that regard, she wished to emphasize that the identification by relatives of a corpse or remains did not mean that a case had been resolved; rather, it should be the starting-point for an investigation, leading to the apprehension, trial and punishment of those responsible.

69. The problem of enforced disappearances was compounded by that of impunity. In some countries, such as Nicaragua, amnesty laws had been invoked as a reason for not investigating unresolved cases. She urged that attention should be given to the serious problem of impunity, as it violated the principles of international law and had negative social consequences.

70. In view of the persistence of enforced disappearances and the policy of impunity, it was essential to have an international instrument to prevent and punish that crime. Nine years previously, her organization had submitted a draft convention on enforced disappearances that had not received the attention it deserved. Over the past three years, it had been active in preparing the draft declaration on the protection of all persons from enforced or involuntary disappearances, which had been approved at the forty-second session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. It was to be hoped that the delays in implementing such a declaration would not mean impunity for those responsible for such crimes.

71. The Working Group had expressed its concern about the threats and repression directed against human rights advocates and the relatives of disappeared persons. Many members of her organization in a number of countries had had their human rights violated as a result of their activities. That was the case of Guadalupe Callocunto, founder of the Association of Relatives in Ayacucho, Peru, who had been arrested and had disappeared on 10 June 1990, and Jesús Alirio Pedraza, defence lawyer of the Committee of Solidarity with Political Prisoners in Colombia, who had disappeared in 1990 in broad daylight. A few days previously, Monsignor Arturo Rivera y Damas and the lawyer Julia Hernández had been threatened in El Salvador.

72. Her organization urged the Commission to approve the draft declaration on the protection of all persons from enforced or involuntary disappearances; to ask the Sub-Commission to consider as a matter of priority the problem of impunity; to call upon the Governments of the Philippines, Peru, Colombia and Guatemala to comply with the suggestions and recommendations made by the Working Group on Enforced or Involuntary Disappearances during its visits to those countries; to appeal to the States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to comply strictly with that instrument; and to call upon those States that had not already done so to sign and ratify the Convention and to take measures to protect human rights advocates and the relatives of disappeared persons.

73. Mr. PREJEAN (International Indian Treaty Council) said he wished to tell the Commission about the valiant struggle of the indigenous peoples and the mistreatment they suffered under colonial Governments, which sought to destroy their culture and their ties to the land. In the United States, where basic human rights were systematically violated by that Government's intelligence services, a relatively impartial judicial system had been transformed into a tool for oppressing those who asserted their rights to the land in accordance with treaties signed by the Government of that country.

74. In 1982, Amnesty International had drawn attention to the case of Leonard Peltier, a leader of the American Indian Movement (AIM), as a graphic example of the growing threat to freedom and justice in the United States. It had referred to the use of coerced and false eyewitness affidavits to extradite Mr. Peltier from Canada for prosecution and imprisonment in the United States. Four years after Mr. Peltier's 1977 conviction for shooting two agents of the Federal Bureau of Investigation (FBI), a lawsuit against the FBI had revealed that, contrary to the government's assertion at the trial, thousands of pages of suppressed documents on the investigation of the agents' deaths revealed that the FBI had planned a paramilitary operation against the men, women and children of AIM and that it had fabricated the eyewitness affidavits for use against Mr. Peltier and the evidence introduced by the Government at the trial to link him with the killing of the agents. The suppressed documents also contained other evidence that would have exonerated Mr. Peltier.

75. The United States Court of Appeals had ruled in September 1986 that the Government had suppressed evidence that the Government's chief witness had been lying and that, had such evidence been available to the defence, Mr. Peltier might have been found not guilty. Nevertheless, and despite an

appeal to the Supreme Court, rejected in October 1987, Mr. Peltier was currently serving two consecutive life sentences for a crime he had not committed. The Commission must investigate the circumstances of his imprisonment.

76. With regard to the 857 Saharans who had disappeared into Moroccan prisons, the Moroccan Government had not taken the matter seriously. NGOs had not been allowed to investigate. The Commission should send a special rapporteur to look into the inhuman treatment of hundreds of Saharans and Moroccans.

77. Mr. RAIANI (International Organization for the Elimination of All Forms of Racial Discrimination) said his organization was concerned about the fate of Kurdish political prisoners in Turkey. Since the spring of 1990, a disturbing increase had been noted in the number of disappearances and cases of detention without charge in the Kurdish provinces. Torture was commonly used during interrogations. The trials were always based on "confessions" extorted by torture, and death sentences continued to be handed down for "political crimes". Since 1990, capital punishment had no longer required ratification by the Parliament before being carried out.

78. Prison conditions had deteriorated. A top security prison had been built in Eskisehir for incommunicado detention, the number of solitary confinement cells for political prisoners had been increased in other prisons, visits had been prohibited, the hygiene and food situation of the political prisoners was appalling, the families of Kurdish political prisoners were prevented from visiting them, and the health of the prisoners had deteriorated to such an extent that epidemics might break out. Many hunger strikes had been organized in 1990 by Kurdish prisoners to protest prison conditions.

79. On 23 August 1990, Turkey had officially suspended its commitment to apply the European Convention on Human Rights to the Kurdish provinces. It was therefore essential to ensure the Kurdish prisoners' protection as provided for under the Geneva Conventions and to designate a special rapporteur to monitor the situation. It was encouraging, however, that the Turkish Government had announced the legalization of the Kurdish language, and it was to be hoped that other measures would follow to enable the Kurds to recover their inalienable historic rights.

80. He drew attention to the situation in Kosovo, where, as part of the cruel policy implemented by the Yugoslav and Serbian authorities, tens of thousands of ethnic Albanians had been detained or imprisoned. In 1989, when Serbia had taken over Kosovo, abolishing its autonomy, more than 300 ethnic Albanian intellectuals had been detained without charges and held for up to six months. Since then, the number of cases of mistreatment, torture and disappearances had been on the increase. Albanians were detained and beaten for refusing to call Kosovo by the new name designated by the Serbian authorities. The Commission should take measures to investigate the degrading human rights situation in Kosovo.

81. Turning to the situation in Tibet, there had been numerous reports from prisoners in the Gutsa prison in Lhasa about torture, and serious cases had also been reported from a detention centre in Chakpori. At Drapchi, a showcase prison for foreign diplomats and journalists, it had been reliably

reported that Mr. Lhagpa Tsering, gaoled for putting up pro-independence posters, had died shortly after a meeting at which inmates had been told not to make dissident statements during an expected visit by Western journalists. He was said to have replied that he would continue to advocate independence. His disfigured body had been delivered to his family on 16 December 1990.

82. Prisons operated by Chinese officials must be open not only to ambassadors and journalists, but also to delegates of the International Committee of the Red Cross and other human rights monitoring organizations for periodic visits.

83. Ms. CHEN (International League for Human Rights) said that the statement by the representative of China on 18 February 1991 had created the impression that torture in China was an aberration rather than an institutional practice of Chinese law enforcement agencies. Yet, despite laws prohibiting that practice, torture remained in routine use by law enforcement officials at all levels, and offenders were not prosecuted.

84. In April 1990, the Deputy Chief Procurator had announced that his department had investigated 2,900 cases of torture or abuse of power by officials in the first quarter of 1990 alone. More than 490 of those cases had involved deaths or injuries. Her organization would like to know how many of those cases had resulted in the punishment of the officials concerned; the same question applied to Tibet, where there had also been many allegations of torture.

85. In April 1990, the Committee against Torture had requested China to submit a new report to that Committee by December 1990. The revised report had not yet been received.

86. The representative of China had asserted that the trial of demonstrators was the internal affair of China and not a legitimate concern of the international community. That was untenable in the context of current international law on human rights violations and inconsistent with the Chinese delegation's own conduct in the Commission and other international bodies.

87. Concerning the trials themselves, the Chinese delegation had stated that there was no presumption either of guilt or of innocence in China. However, as her organization had reported to the Sub-Commission on 5 June 1989, the day after the entry of the armed forces into Tiananmen Square, the Supreme People's Court of China had sent a telegram to the State Council condemning the pro-democracy demonstrations as counter-revolutionary turmoil, thereby prejudging the issue in the trials and precluding any acquittal of the defendants.

88. On the basis of official statistics, the Far Eastern Economic Review had reported in the summer of 1990 that 99.5 per cent of those brought to trial before Chinese courts were found guilty. The Chinese practice of "verdict first, trial later", conducted by the Party Adjudication Committees, made it clear that the trial proceedings themselves were no more than a charade. Articles appearing in 1990 in Chinese legal journals acknowledged the continued existence of that practice.

89. The representative of China had asserted that the defendants in the recent trials had been criminals who had committed assault, vandalism, looting, arson or acts inciting subversion. In actual fact, the defendants in the recent trials in Beijing had been primarily charged with "counter-revolutionary propaganda" and similar offences under part II, chapter I of the Chinese Criminal Code (Counter-revolutionary Crimes).

90. Those offences were vague in their scope and open to political manipulation. Similar offences in the Criminal Codes of the Soviet Union and many Eastern European countries had been abolished. As far as her organization was aware, none of the defendants in the recent trials had advocated violence; they had been charged solely for exercising their basic human rights.

91. The representative of China had stated that the trials had been public, but independent observers had been refused access. It was clear that the audience at recent trials had been hand-picked. The Chinese delegation had referred to regulations that foreigners could attend trials only if they concerned foreigners. If such regulations existed, they contradicted article 7 of the Law of the People's Courts, which provided that trials must be open to the public, except in cases concerning State secrets, confidential information or minors. It was also a fact that some of the independent observers who had been denied entry to the court had been Chinese nationals, including close relatives of the defendants.

92. The representative of China had stated that the defendants had "entrusted" lawyers to defend them. In fact, the defendants had been refused a free choice of counsel. For example, the family of Chen Zi-Ming had informed Amnesty International and the International Federation of Human Rights that Chen had been denied his choice of lawyer; he had been sentenced to 13 years' imprisonment. There had also been reports that the defence lawyers' submissions had been subject to political approval before delivery. Lawyers without prior authorization from the Ministry of Justice had been barred from defending pro-democracy activists.

93. Reference had been made to the extension of time-limits under Chinese law. That did not explain, however, why the defendants in the recent trials had been held in custody without charge for over 18 months in some cases. Moreover, only a few days had elapsed between the levelling of charges against each defendant and the trial. No explanation had been given either as to how it had been possible to complete the trials in half a day.

94. The Chinese delegation had categorically stated that enforced or involuntary disappearances did not occur in China and asserted that some of the cases of disappearances in the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20) were persons who had emigrated of their own free will, while others had been sentenced to prison terms for violating the law and were currently in prison. The disappearance of Han Dongfang, Bao Tong, Gao Xin, Hou Dejian and Wang Weilin all met the criteria of the Working Group on Enforced or Involuntary Disappearances. Hundreds, if not thousands, of cases of disappearances remained unresolved. The Government had not acknowledged the detention of the people concerned and related actions confirmed that they had disappeared.

95. The Chinese delegation had admitted that other gross human rights abuses persisted. It had referred to the existence of "administrative punishment", under which individuals could be sentenced to reform through labour for periods of up to four years. In fact, those sentences could be imposed by the public security organs without recourse to the courts or lawyers.

96. Chinese sources affirmed that more than 869,000 persons had been sent to labour camps since 1980 and that 80,000 were sent annually. The Chinese delegation had also acknowledged that the police could impose detention without recourse to the courts. China should be requested to provide accurate statistics on the number of persons subjected to reform and re-education through labour and to administrative detention.

97. Mr. Bernales Ballesteros (Peru) took the Chair.

98. Ms. AZIMFAR (International Falcon Movement - Socialist Educational International) said that the dictatorial régime in Iran was using extremely cruel methods of torture against its opponents, such as whipping, burning and gouging out eyes. However, it regarded such methods and practices as forms of chastisement, which were valid under Islamic law. She quoted the Head of the Supreme Court of Iran who had explained that a judge could order physical chastisement to force an accused person to tell the truth. Whipping was the prescribed punishment for offences of various kinds, even for women who broke the strict dress code. There were various kinds of whips of different thicknesses and materials for different parts of the body.

99. Torture was even inflicted on children because of their parents' political opinions and it was a common practice to torture a child in front of his parents to break their resistance. Some very young children had even been made to witness the torture of their parents or had been tortured with their parents. She recounted one instance reported by an Iranian torturer, in which a man, his wife, his sister and a three-month-old baby had been stripped, tortured and then buried.

100. She paid tribute to the late Professor Kazem Rajavi, who had been assassinated because of his efforts to inform the Commission of the extent of human rights violations in Iran and called for practical steps to be taken to end such horrifying crimes against humanity.

101. Mr. OTTO (International Union of Students) said that his organization wished to report to the Commission the serious human rights violations, especially enforced disappearances and torture, in Guatemala. Under both the military dictatorship and the civilian government, Guatemalan youth, and students in particular, had been very cruelly and inhumanely persecuted.

102. Only last year, his organization had reported to the Commission the enforced disappearance of 13 student leaders. Four of them had later been found dead, with traces of torture. Paramilitary groups and members of the armed and security forces had harassed and threatened students and their leaders, forcing some to flee the country in order to save their lives. Despite their pleas to the Commission last year to address that critical situation, no proper measures had been taken and the torture, threats and disappearances were continuing. He and his colleagues were themselves liable to be subjected to reprisals when they returned to Guatemala, for having testified before the Commission.

103. In 1990, the Commission had treated Guatemala so leniently that the violators of human rights could act with impunity. For example, in the teeth of the evidence, a court had acquitted the police officers who had murdered two students. The University of Harvard had subsequently ceased the legal advice it had been giving to the Government to help it investigate human rights abuses, inter alia because of that acquittal.

104. Street children were also victims of human rights abuses, torture and cruel and degrading treatment by the national police and all of those violations had occurred during the fourth year of the United Nations Programme of Advisory Services.

105. Paramilitary groups were still carrying out enforced disappearances and torture in secret prisons. However, the reports on torture in Guatemala had never reflected the truth, because people who disappeared were rarely seen again. If, however, such persons were later found dead, their bodies invariably showed signs of torture. In the rare cases where they were found alive, they were afraid to testify because of the pressure to which they were subjected.

106. He appealed to the international community to stop giving paramilitary groups the opportunity to practise torture and make people disappear with impunity, behind a facade of democracy. The Commission should give serious consideration to transferring the situation in Guatemala to agenda item 12 and to appointing a special rapporteur for Guatemala to investigate the activities of the Government, the armed forces and the security forces in relation to human rights.

107. Mr. OGADA (Observer for Kenya), speaking in exercise of the right of reply, said that he wished to refute certain assertions made by the International Human Rights Law Group, namely, that the Kenyan judicial system was not independent and that allegations of the torture of accused persons were dismissed by the courts. The independence of Kenya's judiciary allowed judges and magistrates to make decisions without fear, and the courts ensured that no laws or executive actions were taken which violated the terms of the Constitution.

108. Before Kenya had been granted independence, the Constitution had been drafted by the British Government and negotiated with the Kenyans. The entire bench was white and British. Judges could be removed from office, before the official retiring age of 74, only by the President, acting in accordance with the advice of tribunals consisting of judges from the British Commonwealth countries. In 1988, the relevant section of the Constitution had been amended to restrict membership of those advisory tribunals to Kenyan citizens and the President also had a say in the appointment of judges.

109. In reply to another allegation that confessions were made under duress and torture, he said that the Constitution prohibited torture and emphasized that, under Kenyan law, confessions or admissions of guilt obtained by inducement or threats were inadmissible as evidence in the courts.

110. There had been yet another allegation, that two lawyers had been arrested in October 1990 for carrying out their professional duties. The lawyers in question had been arrested for their suspected involvement in subversive

activities. However, after thorough investigation, the case against one had been dropped and the other had been released pending a hearing of the case against him in the High Court.

111. In response to the allegation by the representative of Norway under item 10, that the Kenyan Government had not replied to the special pleas of the Special Rapporteur, he said that the Government had in fact responded, as evidenced by the statement of the Special Rapporteur himself (E/CN.4/1991/17, para. 102). He hoped that the delegation of Norway would publicize the fact that its statement had been inaccurate.

112. Mr. PEREIRA GOMES (Portugal), speaking in exercise of the right of reply, said that the representative of Indonesia had said that allegations concerning human rights violations in East Timor were baseless. However, if it really wished to refute the persistent allegations of such abuses, Indonesia should not obstruct the collection of evidence, in compliance with the Sub-Commission resolution 1990/15 and it should permit access to the territory by human rights organizations.

113. Referring to the report of the Working Group on Enforced and Involuntary Disappearances (E/CN.4/1991/20), the representative of Indonesia had stated that there were no new cases of disappearances but had failed to mention the opinion expressed in paragraph 211 of that report, "that there was allegedly justifiable fear that those who did report such violations would themselves become victims. Many of the persons who had been reported as disappeared had allegedly been held in unacknowledged military or police detention."

114. As in previous years, the representative of Indonesia had cited cases of missions which had been invited to visit the territory of East Timor and had expressed favourable opinions. One such example given had been a visit by a World Council of Churches delegation but the representative of Indonesia had failed to mention that the head of that delegation had not been issued the necessary visa to enter the territory. Despite the restriction placed on access by human rights organizations to the territory, reliable sources still reported the persistence of intolerable human rights abuses. The report by the State Department of the United States on the situation of human rights in East Timor spoke of extra-judicial killings, torture and mistreatment of detainees and of at least temporary disappearances.

115. Mr. LEE (Republic of Korea), speaking in exercise of the right of reply, said that the reference made to his country by a representative of the International Association of Democratic Lawyers was full of distortions and slander. If what that speaker had said was true, he wondered why not one single case of the abuses referred to had been brought before the courts, in accordance with the relevant procedures for investigation and compensation. In his country, every citizen was entitled to full enjoyment of the rights guaranteed under such laws and procedures.

116. The sentence commuted by the Seoul District Court in the current month to a maximum of five years for police officers, who had been found guilty of torture and ill-treatment, clearly demonstrated how the system of legal redress and compensation for cases of torture operated. If the cases reported had really occurred, it was surprising that not one of them had been reported in the country's mass media, including those papers critical of the Government, which enjoyed full freedom of expression in an open society.

117. Mr. MOTTAGHI-NEJAD (Observer for the Islamic Republic of Iran), speaking in exercise of the right of reply, said that he wished to clarify certain points in the statement made by the terrorist group which, under the name of the International Falcon Movement, had made false allegations regarding the human rights situation in Iran.

118. Having listed a number of crimes perpetrated in recent years in Iran by that organization, causing the deaths of thousands of innocent people, he said that the organization itself claimed to have killed over 100 Government officials.

119. In 1989, that Iraq-based terrorist organization had asserted that, during a military operation inside Iranian territory, it had killed over 50,000 Iranian officers and civilians. In another communiqué, it had further asserted that, during the military operations, it had taken Iranian border settlers as hostages to its military camps inside Iraq.

120. Iranian civilians had been abducted and severely tortured in order to create public terror and in the past 10 years the organization had engaged in over 2,000 bombings, 150 armed bank robberies and 1,200 cases of plunder of personal property. It was clearly high time that the Commission adopted a procedure whereby the status of NGOs could no longer be abusively claimed by terrorist groups.

121. Mrs. SJAHRUDDIN (Indonesia), speaking in exercise of the right of reply, said that, since her delegation had already stated its position on East Timor at an earlier meeting, it had nothing to add.

The public meeting rose at 5.55 p.m.